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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MELINDA V., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MELINDA V.,

Defendant and Appellant.

D054302

(Super. Ct. No. J220479A)

APPEAL from a judgment of the Superior Court of San Diego County, Lawrence Kapiloff, Judge (retired Judge of the San Diego Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), and Carolyn M. Caietti, Judge. Affirmed as modified with directions.

The juvenile court declared 16-year-old Melinda V. a ward of the court (Welf. & Inst. Code, § 602) after sustaining allegations that she committed battery involving serious bodily injury (Pen. Code, § 243, subd. (d)) (all subsequent statutory references are

to the Penal Code) and assault (§ 240). The court informed Melinda the maximum confinement time was four years. The court placed Melinda on probation under various terms, including completion of 40 hours of community service and a no-contact order with the victim, a corroborating witness and their families.

Melinda appeals, contending insufficient evidence supported the battery involving serious bodily injury true finding. She also contends the assault true finding must be reversed because it is a lesser included offense of the felony battery charge, and the no-contact order is overbroad and vague.

## FACTS

On April 30, 2008, Elizabeth R., then 12 years old, was walking home from school when Melinda appeared from behind a tree and pulled Elizabeth by her hair. Elizabeth fell to the ground on her back, and Melinda straddled her. Melinda punched Elizabeth several times.

During the incident, Melinda told Elizabeth to stay out of her "f--king business." Melinda was referring to the previous day when Elizabeth intervened in a fight between Melinda's younger brother and one of Elizabeth's friends.

Elizabeth's right front tooth was knocked loose and she complained about pain on the right side of her face. She also had a cut on her right cheek and her lower lip was cut and bleeding. Elizabeth testified the injury to the tooth was very painful and she had to have a root canal. Asked to rate the pain on a scale of 1 to 10, Elizabeth said the pain had been at a level 10. Elizabeth related she had trouble biting food and even drinking water

caused her pain. After the root canal, Elizabeth no longer had pain. At the time of the trial Elizabeth had further dental work scheduled.

Esmeralda R., a friend of Elizabeth, was across the street and witnessed the incident.

Melinda denied the beating took place.

## DISCUSSION

### I

Melinda contends there was no substantial evidence that Elizabeth sustained serious bodily injury. The contention is without merit.

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the true finding].' " (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The crime of battery involving serious bodily injury is set forth in section 243, subdivision (d). In subdivision (f)(4) of section 243, " '[s]erious bodily injury' " is defined as "a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive

suturing; and serious disfigurement." (§ 243, subd. (f)(4).) The list of injuries in section 243, subdivision (f) is not exclusive.

The record shows Elizabeth's front tooth was knocked loose, causing her a great deal of pain. Elizabeth rated the level of pain a 10, on a scale of 1 to 10. Her ability to eat food was impaired; even drinking water caused her pain. Elizabeth had to undergo a root canal because of the loose tooth and had more dental work scheduled. Nine months after the incident, her tooth was still discolored. Thus, Elizabeth's appearance was altered. Viewing the evidence in a light favorable to the judgment, as we must, we conclude there was sufficient evidence to support the juvenile court's finding that Elizabeth sustained "a serious impairment of [her] physical condition. (§ 243, subd. (f)(4).) We acknowledge this is a close case. " 'A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description. Clearly, it is the trier of fact that must in most situations make the determination.' " (*People v. Escobar* (1992) 3 Cal.4th 740, 752.) Furthermore, " '[i]f there is sufficient evidence to sustain the . . . finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding.' " (*Id.* at p. 750, fn. omitted.)

## II

The trial court stayed punishment for the assault count under section 654. Melinda contends the true finding that she violated section 240 by committing an assault must be reversed because simple assault is a lesser included offense of battery with serious bodily injury. Melinda is correct, as the Attorney General concedes. (*People v. Ortega* (1998)

19 Cal.4th 686, 692-693, overruled on other grounds in *People v. Reed* (2006) 38 Cal.4th 1224, 1228-1229.) We shall order the juvenile court to strike the assault count.

### III

Melinda contends the no-contact probation condition is unconstitutionally vague and overboard. She is correct, as the Attorney General concedes.

As a condition of probation, the juvenile court ordered Melinda to "have no direct or indirect contact with the victim(s) ELIZABETH R., witness(es), ESMERALDA R. or co-offender(s); in this manner, or any of their family members."

A probation condition "must be sufficiently precise for the probationer to know what is required of him [or her]." (*In re Sheena K.* (2007) 40 Cal.4th 875, 890. In the absence of "an express requirement of knowledge," Melinda could not be expected to know in advance who the family members of Elizabeth and Esmeralda are. (*Id.* at p. 891.) The vagueness defect of the probation condition, however, can be rectified by modifying the language to prohibit contact with any persons she knows to be family members of the victim, Elizabeth, and the witness, Esmeralda. (*Id.* at p. 892.)

Also, because there was no evidence of a co-offender in this case, the reference to co-offenders in the probation condition should be deleted.

## DISPOSITION

The matter is remanded to the juvenile court to strike the assault count. The court is also ordered to modify the no-contact probation condition as stated in this opinion.

In all other respects, the judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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McCONNELL, P. J.

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O'ROURKE, J.